

INVENTOR: Desai et al.

S/N 09/682,843

REMARKS

Claims 1-31 are pending in the current application. In the Office Action mailed May 12, 2003, the Examiner rejected claims 1-9 and 28-31 under 35 U.S.C. §112, second paragraph. The Examiner next rejected claims 16-21 under 35 U.S.C. §102(b) as being anticipated by Kliever (USP 3,479,876). Claims 1-5, 7-12, 15, 22-26, 28-29, and 31 were rejected under 35 U.S.C. §103(a) as being unpatentable over Wang (USP 6,290,413) in view of OMEGAMARKER® Temperature Test Kit. Claim 27 was rejected under 35 U.S.C. §103(a) as being unpatentable over Wang in view of OMEGAMARKER® as applied to claims 1-5, 7-12, 15, 22-26, 28-29, and 31 above, and further in view of Anderson (USP 4,762,493).

Applicant has amended claims 2, 10, and 28 to overcome the Examiner's objection thereto and improve the readability thereof. As such, the relationship between the at least one annular lip of the housing and the collet is specifically recited.

The Examiner next objected to claim 13 under 37 C.F.R. §1.75(c) for failing to further limit the subject matter of the previous claim. Claim 13 has been amended to further define that the threads of each collet engage at least one ridge of each temperature indicator stick to extend and retract the indicator stick from the housing. As such, that which is called for in claim 13 further limits the subject matter of the collet of the previous claim. Therefore, claims 2, 10, 13, 14, and 28 are believed in proper format.

The Examiner next rejected claims 1-9 and 28-31 under 35 U.S.C. §112, second paragraph as being indefinite. Applicant has amended the preambles of each of the above claims, as suggested by the Examiner, to further recite a "dual temperature indicator stick assembly". Such suggestion is appreciated. The Examiner further stated the language of claims 22-27 "is confusing because the preamble of the claims is directed to a method to provide a dual temperature indicator stick whereas the body of the claim recites separate steps of forming a first and second indicator sticks." While Applicant believes that neither a first nor a second indicator stick would be confused with a **dual** temperature indicator stick by a person of ordinary skill in the art – applicant has amended claim 22 to alleviate any confusion.

The Examiner next rejected claims 6 and 30 under 35 U.S.C. §112, second paragraph, as being incomplete for "omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections." The Examiner states that "the omitted structural cooperative relationships are: the interrelation between the collet and the connector." Claim 1, in part, calls for a connector physically connecting the first and second indicator sticks in a single assembly such that the first and second indicator sticks are

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independently operable thereto. Claim 6 calls for, in part, a ridge of the first or second indicator stick configured to engage threads of a collet. MPEP §2172.01 states that:

It is not essential to a patentable combination that there be interdependency between the elements of the claimed device or that all the elements operate concurrently toward the desired result. *citation omitted*. A claim does not necessarily fail to comply with 35 U.S.C. 112, second paragraph where the various elements do not function simultaneously, are not directly functionally related, do not directly intercooperate, and/or serve independent purposes.

That is, that which is called for in claims 1 and 6 need not recite a specific structural relationship between each and every element therein. Further, according to MPEP §2172.01, only Applicant can designate what is essential, not the Examiner. That is:

A claim which omits matter disclosed to be essential to the invention as described in the specification or in other statements of record may be rejected under 35 U.S.C. 112, first paragraph, as not enabling. *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). See also MPEP §2164.08(c). Such essential matter may include missing elements, steps or necessary structural cooperative relationships of elements described by the applicant(s) as necessary to practice the invention.

As such, the Examiner's rejection of claims 6 and 30 is believed improper and unsustainable.

The Examiner next rejected claims 16-21 under 35 U.S.C. §102(b) as being anticipated by Kliewer. Applicant has amended claim 16 to further define the present invention. As amended, claim 16, in part, calls for a first means for indicating a first temperature when in direct contact with a heated surface by leaving a portion of the first means thereon; a second means for indicating a second temperature when in direct contact with a heated surface by leaving a portion of the second means thereon, and a means for replaceably retaining the first means to the second means. It is apparent that the successive temperature indicator of Kliewer is constructed such that the indicator assembly is fully retained within a housing. That is, the indicator means of Kliewer are not in direct contact with a heated surface and do not leave a portion thereof in on the heated surface. That is, the alloy slug 58 melts and solidifies within annular groove 28 and recess 28 of closed end 14. Additionally, rod 30 extends from cap 46 as shown in Fig. 2 and is not in direct contact with the heated surface.

The Examiner next rejected claims 1-5, 7-12, 15, 22-26, 28-29, and 31 under 35 U.S.C. §103(a) as being unpatentable over Wang in view of OMEGAMARKER® Temperature Test Kit stating that "As shown in Figure 1, said connector prevents contact between said first and second

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crayons and allows said first element and second elements to be independently operable." Applicant disagrees in several respects.

The term temperature does not appear anywhere in Wang. While the connecting device 20 may prevent contact between a first and a second crayon, the connector does not provide for the independent operation thereof. That is, it is quite apparent that extending a first crayon through its respective end piece 50 directly effects the position of the second crayon. Claim 1 calls for, in part, a connector physically connecting the first and second indicator sticks in a single assembly such that the first and second indicator sticks are independently operable thereto. It is apparent that the assembly of Wang does not include a connector wherein the crayons are independently operable thereto. Therefore, claim 1, and those claims that depend therefrom, are patentably distinct over the cited art.

The Examiner further states that "As shown in Figure 1, each of the collets has threads attached to the connector and is configured to engage one of the temperature indicator sticks in the housing (see lines 37-42 of column 2)." Wang states that "Two end-pieces (50) are respectively attached to the opposite ends of the barrel (10) to limit the range of movement of the thrust device (40). The end-piece (50) is tapered and has a through hole (not numbered) defined in the end of the end-piece (50) to allow the writing implement (30) to extend through the end-piece (50)." Col. 2, lns. 37-42. That is, the crayons pass through the end pieces. A person of ordinary skill in the art would readily understand that a passing through orientation is not an engaged orientation. Webster's II New Riverside University Dictionary defines "engage" as "to interlock or cause to interlock: MESH. See definition 7 (copy attached). It is clear that the end piece and the crayon of Wang are not so engaged.

Claim 10 calls for, in part, a pair of collets configured to engage separate temperature indicator sticks upon rotation of the collet about the housing. As argued above, the end piece of Wang does not engage the crayon that passes therethrough. Therefore, claim 10, and those claims that depend therefrom, are patentably distinct over the cited art.

Claim 22, has been amended to further define the present invention. As amended, claim 22 calls for, in part, connecting the first and second indicator sticks in a single assembly such that the first indicator stick and the second indicator stick are independently engaged therewith. As such, claim 22, and the claims that depend therefrom, are believed to define the present invention over the cited art.

The Examiner next rejected claim 27 under 35 U.S.C §103(a) as being unpatentable over Wang in view of OMEGAMARKER® and further in view of Anderson stating that "the teaching

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of Anderson with respect to forming a crayon having a cross section that prohibits rolling, in the broad sense, would also result in other non-circular shapes including an oval." Anderson states that "Crayon 10 may be standard in shape (round) or the preferred triangle shape as shown." Col. 2, lns. 45-46. Anderson further states that the triangular shape allows for improved packaging and has the additional advantage of "being far more comfortable to the hand than the traditional round crayon, with each flat side corresponding to a flat finger area in the traditional grasp for a pen, pencil, or crayon" Col. 3, lns. 20-28. That is, Anderson teaches, that minimally, the crayon should have at least two flat sides to accommodate a flat finger. Such is not an oval nor is an oval shape disclosed therein. As such, claim 27 is patentably distinct over the cited art.

Regarding the rejection of claims 28, 29, and 31, each of which are the combination of that subject matter the Examiner previously indicated as allowable over Wang in view of OMEGAMARKER®, the Examiner states that "upon a revision of the definition of the term 'collet' i.e., a collar, which differs in scope from the description for the 'collet' elements provided in the disclosure, it is considered that the connecting device shown by Wang in the combination of Wang and the OMEGAMARKER® kit discussed above in paragraph 11 includes a pair of collets as recited in claim 2, 5, and 8." Regarding claims 2, 5, 28, and 29, as shown above, the end pieces of Wang do not engage the crayons that pass therethrough. Additionally, the amendments to claim 1 changes the scope thereof. As such, the scope of claims 28 and 29, differs from the scope of claims 2 and 5. Therefore, as Wang does not show a "collet" that engages a crayon, and the scope of claims 28 and 29 is different than the scope of claims 2 and 5, respectively, claims 2, 5, 28, and 29 are patentable thereover.

The Examiner indicates that claims 13 and 14 would be allowable if rewritten to overcome the objections and in independent form. Applicant appreciates the Examiner's indication of allowable subject matter, but Applicant is hesitant to present any more new claims. In the previous Office Action, the Examiner indicated allowable subject matter which applicant accepted and presented in independent form and submitted the requisite fees for entry and consideration thereof. The Examiner has subsequently rejected three out of four of these claims solely on the art already of record and previously considered. The fourth such claim, claim 30, the Examiner indicates would be objected to under 37 C.F.R. §1.75 as being a substantial duplicate of claim 6. As argued above, claim 6 includes physically connecting the first and second indicator sticks in a single assembly such that the first and second indicator sticks are independently operable thereto. Claim 30 includes no such limitation and therefore is not a

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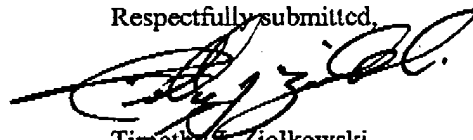
duplication of claim 6. Applicant therefore reserves the right to add new claims to capture this "allowable" subject matter at a later date..

The Examiner states that "should claim 30 be found allowable, claim 6 will be objected to under 37 C.F.R. 1.75 as being a substantial duplicate thereof." However, the MPEP specifically states that "Court decisions have confirmed applicant's right to restate (i.e., by plural claiming) the invention in a reasonable number of ways. Indeed, a mere difference in scope between the claims has been held to be enough." MPEP §706.03(k). Claim 30 calls for, in part, connector physically connecting the first and second indicator sticks in a single assembly wherein at least one of the first and second indicator sticks has a ridge configured to engage threads of a collet during extension of one of the first and second indicator sticks from each other. Claim 1 calls for, in part, a single assembly such that the first and second indicator sticks are **independently operable thereto**. Such a requirement is not present in claim 30 and, as such, claim 30 has a different scope from claim 1. Therefore, objection thereto would not be proper.

Therefore, in light of the foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 1-31.

Applicant appreciates the Examiner's consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,



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engage enkephalin

engage (en-gaj) *v.* -gaged, -gaging, -gages. [ME *engagen*, to pledge something as security for repayment of debt < OFr. *engager*: *en*, in (< Lat. *in*) + *gag*, pledge, of Germanic orig.] —*vt.* 1. To obtain or contract for the services of: *EMLOY* < *engage* an architect. 2. To contract for the use of: *RENT* < *engage* a car. 3. To obtain and hold the attention of: *ENGROSS* < *engage* the children's full support. 4. To require the use of: *OCCUPY* < *Training engages most of an athlete's time.* 5. To promise, esp. to marry. 6. To enter or bring into conflict with: < *We have engaged the enemy.* 7. To interlock or cause to interlock: *MESH*. 8. To win; attract. 9. To involve; entangle < *engaged me in their silly quarrel.* 10. Archaic. To give or take as security. —*vi.* 1. To involve oneself or become occupied: *PARTICIPATE* < *engage in a discussion.* 2. To assume an obligation: *ACCEDE*. 3. To enter into conflict or battle. 4. To become involved or interlocked. —*en-gage'ee* *n.*
engage (en-gaj) *adj.* [Fr. *part.* of *engager*, to engage < OFr.] Actively committed, as to a political cause.
engaged (en-gajd) *adj.* 1. Employed or occupied: *BUSY*. 2. Committed to. 3. Pledged to marry. 4. Involved in conflict or battle. 5. Being in gear: *MESHED*. 6. Partly sunk, built into, or attached to another part, as columns on a wall.
engagement (en-gajment) *n.* 1. The act of engaging or state of being engaged. 2. Betrothal. 3. One that engages. 4. A promise to appear at a certain time: *APPOINTMENT*. 5. a. Employment, esp. for a given period of time. b. A period of employment. 6. A battle. 7. The state of being in gear.
engaging (en-gajing) *adj.* Charming. —*en-gag'ing-ly* *adv.*
engarde (en-gard) *interj.* [Fr.: *en*, on + *garde*, guard.] —Used to warn a fencer to assume the first position preparatory to a match.
engarland (en-garland) *vt.* -land-ed, -land-ing, -lands. To deck or encircle with or as if with a garland.
engender (en-jen-dar) *v.* -dered, -der-ing, -ders. [ME *engenderen* < OFr. *engender* < Lat. *ingenere*: *in*, in + *generare*, to produce < *gemma*, birth.] —*vt.* 1. To give rise to. 2. To procreate: propagate. —*vi.* To come into existence.
engine (en-jin) *n.* [ME *engin* < OFr. *engin* < Lat. *ingenium*.] 1. a. A machine that converts energy into mechanical motion. b. A mechanical appliance, instrument, or tool < *engines of destruction.* 2. A locomotive. 3. Archaic. An agent, instrument, or means of accomplishment.
engine block *n.* The cast metal block housing the cylinders of an internal combustion engine.
engineer (en-jin-ir) *n.* [ME *engineer* < OFr. *engineier* < Med. Lat. *ingeniator*, contriver < *ingeniare*, to contrive < *ingenium*, skill.] 1. One trained or professionally engaged in a branch of engineering. 2. One who manages an enterprise in a shrewd or skillful way. 3. One who operates an engine. —*vt.* -neered, -neering, -neers. 1. To plan, construct, and manage as an engineer. 2. To plan, manage, and accomplish by skillful acts or contrivance: *MANEUVER* < *engineered a meeting for the couple.*
engineering (en-jin-ir-ing) *n.* 1. The application of mathematical and scientific principles to practical ends, as the design, construction, and operation of economical and efficient structures, equipment, and systems. 2. An engineer's profession or work.
engird (en-gird) *vt.* -gird (gird) or -gird-ed, -gird-ing, -girds. To encircle; surround.
engirdle (en-girdl) *vt.* -dled, -dling, -dles. To encircle or surround with or as if with a girdle.
engire (en-gir) *v.* var. *pt.* & *pp.* of *ENGIRD*.
engishal (en-gishol) *adj.* Located or occurring within a glacier.
English (en-glish) *adj.* [ME *Englisch* < OE *Englisc* < *Engle*, the Angles, Of, relating to, derived from, or typical of England, its people, or its culture. —*n.* 1. The people of England. 2. a. The West Germanic language of England, the United States, and other countries that are or have been under English control or influence. b. The English language of a specific time, area, person, or group of people. 3. A translation into or an equivalent in the English language. 4. A course or class in the study of English literature, language, or composition. 5. Fourteen-point printing type. 6. Of, of, or relating to a ball by striking it on one side, as in *clubbing*, *club-ee*. 1. To translate into English. 2. To adapt into English: *ANGLICIZE*.
English daisy *n.* DAISY 2.
English finish *n.* A smooth, nonglossy paper finish.
English horn *n.* A double-reed woodwind musical instrument similar to but larger than the oboe and pitched lower by a fifth.
Englishman (en-glish-men) *n.* A man who is English by birth, descent, or naturalization.
English muffin *n.* A flat round of yeast dough baked on a griddle and usu. split and toasted before eating.
English plantain *n.* Ribgrass.

English setter *n.* A dog orig. bred in England, having a silky white coat usu. with black or brownish markings.
English sheepdog *n.* The Old English sheepdog.
English sonnet *n.* A Shakespearean sonnet.
English sparrow *n.* The house sparrow.
English walnut *n.* 1. A Eurasian tree, *Juglans regia*, cultivated in southern Europe and California. 2. The large edible nut of the English walnut tree.
Englishwoman (en-glish-wum-an) *n.* A woman who is English by birth, descent, or naturalization.
englut (en-glut) *vt.* -glutted, -glut-ting, -gluts. [OFr. *englutir* < Lat. *inglutire*: *in*, in + Lat. *glutire*, to swallow.] To swallow greedily: *CRAVE*.
engorge (en-gorj) *v.* -gorjed, -gorjing, -gorges. [OFr. *engorgier*: *en*, in (< Lat. *in*) + *gorge*, throat < Lat. *gurgis*, gulf.] —*vt.* 1. To devour greedily. 2. To gorge: *glut*. 3. To fill to excess, as with blood or another bodily fluid. —*vi.* To feed ravenously. —*en-gorge'-ment* *n.*
engraft (en-graft) *vt.* -grafted, -grafting, -grafts. 1. To graft (a scion) onto or into another plant. 2. To plant firmly: *ESTABLISH*. —*en-graft-ment* *n.*
engrailed (en-graid) *adj.* [ME *engrailed* < OFr. *engraiser*: *en*, in (< Lat. *in*) + *grail*, slender < Lat. *gracilis*.] 1. Indented along the edge with small curves. 2. Having an edge formed by a ring of dots.
engrain (en-grin) *vt.* -grained, -grain-ing, -grains. [ME *engrainen*, to dye red < OFr. *engrainier*, to dye < *en* grains, in cochineal dye.] To ingrain.
engram also **engramme** (en-grim) *n.* A hypothetical alteration of living neural tissue, posited as an explanation for memory.
engrave (en-grav) *vt.* -graved, -graving, -graves. 1. To carve, cut, or etch into a material. 2. a. To carve, cut, or etch into a block or printing surface. b. To print from a block or plate made by such a process. 3. To impress deeply < *terrible events that were forever engraved in their memory.* —*en-grave'ee* *n.*
engraving (en-grav-ing) *n.* 1. The art or technique of one that engraves. 2. An engraved printing surface. 3. A print made from an engraved plate or block.
engross (en-gros) *vt.* -gros-sed, -gros-sing, -gros-ses. [Partly < ME *engrossen*, to collect in large quantity < OFr. *engrossier* < *en* gross, in large quantity, and partly < ME *engrossen*, to write in a large hand < AN *engrosser*, pmb. < Med. Lat. *ingrossare*: *in*, in + *grossa*, a copy in a large hand < Lat. *grossus*, thick.] 1. To occupy the attention of: *ASSORB*. 2. To acquire most or all of a commodity so as to monopolize a market. 3. a. To write or transcribe in a large, legible hand. b. To prepare the text of (an official document) by writing or printing. —*en-gros-see'ee* *n.* —*en-gros-sement* *n.*
engrossing (en-grasing) *adj.* Occupying one's complete attention < *an engrossing tale.* —*en-gros-sing-ly* *adv.*
engulf (en-gulf) *vt.* -gulfed, -gulf-ing, -gulfs. 1. To enclose and surround completely. 2. To swallow up or overwhelm by or as if by overflying and enclosing. —*en-gulf-ment* *n.*
enhance (en-hans) *vt.* -hanced, -hance-ing, -hance-es. [ME *enhancen* < AN *enhancer* < OFr. *enhancer* < VLat. **inaltare*: *in*, in (intensive) + *altus*, high.] To increase or make greater, as in value, beauty, or reputation: *AUGMENT*. —*en-hance-ment* *n.* —*en-hance'ee* *n.* —*en-hance'ive* *adj.*
enharmonic (en-har-mo-nik) *adj.* [Fr. *enharmonique* < OFr., of a scale employing quarter tones < Gk. *enharmonios*: *en*, in + *harmonia*, harmony.] Mus. Of, pertaining to, or involving the use of two different written representations, as C# and Db, for the same tone. —*en-har-mo-nic-ally* *adv.*
enigma (en-ig-mo) *n.* [Lat. *aenigma* < Gk. *aenigma* < *aeniascein*, to speak in riddles < *aenias*, fable.] 1. One that is puzzling, ambiguous, or inexplicable. 2. Cryptic writing or speech.
enigmatic (en-ig-matik) or **enigmatical** (en-ig-matik) *adj.* Of or like an enigma: *PUZZLING*. —*en-ig-mat'ic-ally* *adv.*
enclave (en-klav) *vt.* -claved, -clav-ing, -claves. 1. To make into an island. 2. To set apart from others: *ISOLATE*.
enjambement or **enjambement** (en-jam-bment, jam-bment) *n.* [Fr. *enjambement* < OFr. *enjamber*, to straddle: *en*, in (< Lat. *in*) + *lambe*, leg < Lat. *gamba*, hoof, perh. < Gk. *karpē*, bend.] Continuation of a sentence from one line or couplet of a poem to the next so that closely related words fall on different lines.
enjoin (en-join) *vt.* -joined, -join-ing, -joins. [ME *enjoinden* < OFr. *enjoindre* < Lat. *injungere*: *in*, in + *jungere*, to join.] 1. To direct with emphasis and authority: *COMMAND*. 2. To forbid. —*en-join'er* *n.* —*en-join-ment* *n.*
enjoy (en-joy) *vt.* -joyed, -joy-ing, -joys. [ME *enjoien* < OFr. *enjoier*: *en*, in (< Lat. *in*) + *joire*, to rejoice < Lat. *gaudere*.] 1. To derive pleasure from: *RELISH*. 2. To have the benefit or use of < *enjoys good living.* 3. To make happy < *enjoying themselves with a new game.* —*en-joy-a-ble* *adj.* —*en-joy-a-bly* *adv.* —*en-joy'er* *n.*
enjoyment (en-joy-ment) *n.* 1. The act or state of enjoying. 2. Use or possession of something pleasurable or beneficial. 3. Something giving pleasure.
enkephalin (en-kef-a-lin) *n.* [Gk. *enkephalos*, in the head (*en*, in + *kephale*, head) + *in*.] One of two closely related proteins occurring in the brain and having opiate qualities.

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to abuse th vision a about item, edible, gallop, circus